

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

CHARLES and JAMIE GIBBS; WILLIAM and  
CORIE CONNELLY; GALEN and LESLIE  
SATTERLEE; GAIL HENRICHSEN; DUSTIN and  
MARTHA BARNETT; DAVE and HOLLY  
MARCUS; and KELLY BABB individually and on  
behalf of those similarly situated,

Plaintiffs,

vs.

UPONOR CORPORATION, a Finnish  
corporation; UPONOR, INC., an Illinois  
corporation; WIRSBO COMPANY, an Illinois  
company; and UPONOR WIRSBO COMPANY,  
an Illinois company,

Defendants.

Case No. 12-cv-290-DRH-PMF

**JURY TRIAL REQUESTED**

**CLASS ACTION COMPLAINT**

Plaintiffs CHARLES and JAMIE GIBBS, WILLIAM and CORIE CONNELLY, GALEN and LESLIE SATTERLEE, GAIL HENRICHSEN, DUSTIN and MARTHA BARNETT, DAVE and HOLLY MARCUS, and KELLY BABB (hereinafter collectively referred to as "Plaintiffs"), individually and on behalf of those similarly situated in Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties, through their undersigned counsel, brings this class action against defendants UPONOR CORPORATION, a Finnish corporation; UPONOR, INC., an Illinois corporation; WIRSBO COMPANY, an Illinois company; UPONOR WIRSBO COMPANY, an Illinois company (collectively "Defendants" or "Uponor entities"). The following allegations are based on personal knowledge as to Plaintiffs' own conduct and are made on information and belief as to the acts of others.

**I.**

**THE NATURE OF THIS ACTION**

1. Plaintiffs, individually and on behalf of those similarly situated in Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties, bring this class action on behalf of all owners of homes with plumbing systems utilizing high zinc content yellow brass potable water plumbing system components manufactured by and/or on behalf of the Uponor entities, including, but not limited to, those components manufactured in conformance with ASTM F877, F1960 and/or F2080 (collectively “Components”), as well as any person or entity who has paid for repairs or damage caused by the failure of the Components, which are defective.

2. Plaintiffs have been damaged as a result of the design, manufacture, development, advertisement, marketing and sale of the Components and as a result of the installation of the Components in their homes.

3. Uponor entities have designed, manufactured, sold and/or distributed their Components for PEX plumbing systems throughout Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties.

4. Uponor entities have warranted, advertised and guaranteed that the high zinc content yellow brass Components and their PEX plumbing systems had a lengthy warranty that expressly covered consequential damages arising from leaks or failures in the plumbing systems.

5. Uponor entities have warranted and advertised their high zinc content yellow brass Components and PEX plumbing systems as “proven,” “carefully engineered,” “reliable,” and resistant to corrosion.

6. These representations however proved untrue when the high zinc content yellow brass Components began to prematurely fail across Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties. These failures have resulted or will result in the leaching of impermissible amounts of lead into the potable-water-delivery systems and substantial damage to property other than the Components themselves prior to the Components reaching their useful life.

7. Plaintiffs and the classes they seek to represent have suffered damage as a result of owning homes with defective Components.



1           a. Plaintiffs, CHARLES and JAMIE GIBBS, are citizens of the State of Arizona  
2 and owners of a home located at 4107 E Ravenswood Dr., Gilbert, Arizona. The plumbing system  
3 installed in Plaintiffs' home utilizes the Defendants' high zinc content yellow brass plumbing  
4 components.

5           b. Plaintiffs, WILLIAM and CORIE CONNELLY, are citizens of the State of  
6 Arizona and owners of a home located at 3459 E. Arianna, Gilbert, Arizona. The plumbing system  
7 installed in Plaintiffs' home utilizes the Defendants' high zinc content yellow brass plumbing  
8 components.

9           c. Plaintiffs, GALEN and LESLIE SATTERLEE, are citizens of the State of  
10 Arizona and owners of a home located at 1877 West Macaw Drive, Chandler, Arizona. The  
11 plumbing system installed in Plaintiffs' home utilizes the Defendants' high zinc content yellow  
12 brass plumbing components.

13           d. Plaintiff, GAIL HENRICHSEN, is a citizen of the State of Arizona and owner of  
14 a home located at 21803 N. Kirkland Drive, Maricopa, Arizona. The plumbing system installed in  
15 Plaintiff's home utilizes the Defendants' high zinc content yellow brass plumbing components.

16           e. Plaintiffs, DUSTIN and MARTHA BARNETT, are citizens of the State of  
17 Arizona and owners of a home located at 43689 W. Cahill Drive, Maricopa, Arizona. The  
18 plumbing system installed in Plaintiffs' home utilizes the Defendants' high zinc content yellow  
19 brass plumbing components.

20           f. Plaintiffs, DAVE and HOLLY MARCUS, are citizens of the State of Arizona  
21 and owners of homes located at 16417 South 28<sup>th</sup> Avenue, Phoenix, Arizona and 42164 W. Rummy  
22 Road, Maricopa, Arizona. The plumbing systems installed in Plaintiffs' homes utilize the  
23 Defendants' high zinc content yellow brass plumbing components.

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1           g. Plaintiff, KELLY BABB, is a citizen of the State of Arizona and owner of a  
2 home located at 34530 North Haryana Road, San Tan Valley, Arizona. The plumbing system  
3 installed in Plaintiff's home utilizes the Defendants' high zinc content yellow brass plumbing  
4 components.

5           14. Plaintiffs have standing, pursuant to FRCP 23(a), to bring all of the claims set forth in  
6 this Complaint as representatives of the proposed class of similarly situated owners of homes in the  
7 developmental communities in which Plaintiffs' homes are located and homes in Central and Southern  
8 Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties, with potable water  
9 plumbing systems utilizing the Uponor entities' high zinc content yellow brass plumbing components,  
10 including those Components manufactured to be in conformance with ASTM F877, F1960 and F2080.

11           15. All of the owners of homes in the developments set forth in this Complaint and homes in  
12 Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties, that  
13 contain or contained the Defendants' Components have been injured as a result of the presence of these  
14 defective Components. Blatant manifestations of this defect have caused additional damages including,  
15 but not limited to loss of structural integrity and/or strength of the brass Components, weeping, leaks,  
16 blockages, restriction and/or reduction of water flow and/or pressure, loss of use and function of the  
17 plumbing system and related improvements and/or appliances, and the leaching of lead into the potable  
18 water plumbing systems, resultant damage to the homes and the work of others (e.g., water loss,  
19 damage to framing, drywall and/or other building materials), resultant damage to water quality,  
20 economic losses including costs of maintenance and/or repair, and all reasonable fees, costs, interest  
21 and/or expenses associated therewith. The damages are expected to increase over time as the defective  
22 Components continue to corrode. The homes with the Components must be refitted and/or replumbed  
23 in order to ensure that use of the defective Components has been completely abandoned in those  
24 homes. Plaintiffs estimate that it will cost approximately \$10,000 per residence to replace or replumb  
25 the defective Components and/or plumbing systems.

26           16. Plaintiffs are informed, believe, and thereupon allege that all of the Defendants,  
27 proximately caused the injuries and damages herein alleged:  
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1 a. Defendant UPONOR, INC. is an Illinois corporation that is responsible for the  
2 design, manufacture, and/or distribution of the defective Components. UPONOR, INC. is the agent of  
3 its parent, UPONOR CORPORATION, with whom it acted as a single, collective and common  
4 business enterprise.

5 b. Defendant UPONOR WIRSBO COMPANY is an Illinois company that is  
6 responsible for the design, manufacture, and/or distribution of the defective Components, both directly  
7 and indirectly, by and through its alter-egos, members, agents, predecessors-in-interest and/or other  
8 representatives.

9 c. Defendant WIRSBO COMPANY is an Illinois company that is responsible for the  
10 design, manufacture, and/or distribution of the defective Components, both directly and indirectly, by  
11 and through its alter-egos, members, agents, predecessors-in-interest and/or other representatives.

12 d. Defendant UPONOR CORPORATION is a Finnish corporation that is responsible  
13 for the design, manufacture, and/or distribution of the defective Components, both directly and  
14 indirectly, by and through its agents and collective business enterprise partners, including, but not  
15 limited to UPONOR, INC.

16 i. The Uponor entities form a worldwide group or conglomerate of interrelated  
17 companies, with UPONOR CORPORATION at the apex, that are commonly engaged in the line of  
18 business that is designing, developing, testing, manufacturing, distributing, supplying, marketing,  
19 selling, and warranting plumbing and climate-control products for the construction and public utility  
20 industries.

21 ii. UPONOR CORPORATION's subsidiaries, UPONOR, INC.; WIRSBO  
22 COMPANY; and UPONOR WIRSBO COMPANY, perform functions that are compatible with and  
23 assist UPONOR CORPORATION in the pursuit of its own business.

24 iii. But for the existence of its subsidiaries, UPONOR CORPORATION would  
25 have to undertake to perform substantially similar services as those undertaken by its subsidiaries.  
26 UPONOR CORPORATION exerts control over its subsidiaries that is so pervasive and continual that  
27 they may be considered the agents, members, alter egos, or instruments of one another and especially  
28 their apex company, UPONOR CORPORATION, regardless of the maintenance of corporate

1 formalities.

2 e. Plaintiffs allege that at all relevant times, each and every Uponor Defendant was  
3 acting as the duly authorized agent of each and every other Uponor Defendant with respect to each and  
4 every wrong committed by each and every other Uponor Defendant.

5 17. Plaintiffs allege and assert that they have had to retain legal counsel from the firms of  
6 CKGH Law; Canepa, Riedy & Rubino; Carraway & Associates, LLC; Kemp Jones & Coulthard, LLP;  
7 Lynch Hopper, Salzano & Smith, LLP; Maddox, Isaacson & Cisneros; and Goldenberg, Heller  
8 Antognoli & Rowland, P.C., to represent them in this legal action, and are therefore entitled to recover  
9 damages and entitlements therein, their reasonable attorneys' fees, expert fees, costs, expenses, and  
10 interest upon the same as part of any judgment entered herein, including the Arizona Consumer Fraud  
11 Act.

### 12 **III.**

#### 13 **JURISDICTION AND VENUE**

14 18. This Court has jurisdiction over the subject of this matter pursuant to 28 U.S.C.  
15 1332(d)(2). Plaintiffs have pled this as a class action on behalf of more than one hundred (1,000) Class  
16 members who are citizens and residing in the State of Arizona and the amount in controversy exceeds  
17 Five Million Dollars (\$5,000,000.00) and any and all relief Plaintiffs and class members seek is within  
18 the jurisdictional limits of this Court.

19 19. This Court has personal jurisdiction over all Defendants because their activities in the  
20 Southern District of Illinois have been systematic, continuous, and substantial.

21 20. This Court has jurisdiction over Defendant UPONOR CORPORATION because it is the  
22 alter ego of its subsidiaries and/or its subsidiaries are its members, agents, and/or predecessors-in-  
23 interest. The Defendants act as a single, collective, and common business enterprise for Defendant  
24 UPONOR CORPORATION's own business. There is such a unity of ownership and interest between  
25 Defendant UPONOR CORPORATION and the other Defendants and its subsidiaries that the  
26 ownership and interest of one is inseparable from the other. Adherence to the corporate fiction would  
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1 sanction fraud and promote injustice. Defendant UPONOR CORPORATION exerts control over its  
2 subsidiaries that is so pervasive and continual that the subsidiaries may be considered its agents,  
3 members, or instruments. But for this important relationship, Defendant UPONOR CORPORATION  
4 would have to undertake to perform substantially similar services as its subsidiaries.

5 21. Venue is proper because all Defendants reside in Illinois, and all Defendants are subject  
6 to personal jurisdiction in the Southern District of Illinois because of their systematic, continuous, and  
7 substantial general business contacts within the Southern District.  
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#### 9 IV.

#### 10 CLASS ACTION ALLEGATIONS

11 22. A class action is alleged pursuant to Rule 23(b)(3) of the Federal Rules of Civil  
12 Procedure. The class consists of: (1) all owners homes in Central and Southern Arizona, including, but  
13 not limited to, Maricopa, Pinal and Pima Counties with the Defendants' high zinc content yellow brass  
14 potable water plumbing Components and (2) owners of homes that paid for repairs or sustained  
15 damages as a result of the Defendants' high zinc content yellow brass potable water plumbing  
16 Components.

17 23. Plaintiffs estimate that their proposed class consists of in excess of one thousand (1,000)  
18 owners in Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and Pima  
19 Counties and is thus so numerous that the joinder of actions by these members would be impracticable.  
20 The putative class members have all been injured in the same way because they own homes and/or  
21 buildings that contain or contained the Defendants' high zinc content yellow brass potable water  
22 plumbing Components, which are defective in that they are manufactured from high-zinc content brass  
23 which will be damaged due to dezincification corrosion when exposed to water. Questions of law and  
24 fact, the answers of which are common to the class, that arise on account of the claims asserted for this  
25 defect include, but are not limited to: 1) are high-zinc-content brass plumbing components damaged  
26 due to dezincification corrosion when they are exposed to water (fact); 2) does this damage to the  
27 Components due to dezincification corrosion attack render the Components defective (law and fact);  
28 and 3) did the Defendants owe the class members the duty to provide defect-free Components and/or



1 homes or buildings (law).

2 24. The story of this single, defective product is the same for each of the proposed class  
3 members. Because the proposed class members' claims arise from the same course of events, identical  
4 issues of liability, causation, negligence, strict liability, and breach are shared by and between each of  
5 them and the claims of the Plaintiffs are typical of the claims of the putative class members and could  
6 be asserted by any of them.

7 25. Plaintiffs are fair and adequate representatives for this proposed class because they do  
8 not have any claims that are antagonistic to the claims of the putative class members.

9 26. The claim of each individual class member is for a relatively small monetary amount,  
10 approximately \$15,000 (including an estimated cost-to-repair, reasonable attorney's fees and costs),  
11 and most of the class members are natural persons who do not regularly engage in litigation.  
12 Defendants, on the other hand, are large corporations that are not strangers to litigation and, in fact,  
13 have insurance that will cover the cost of their defense of these claims. Plaintiffs are thus informed and  
14 believe that the putative class members do not have an interest in individually controlling the  
15 prosecution of their claims for this defect.

16 27. It is desirable to concentrate the litigation of these claims in this forum because of the  
17 diversity of the parties and the amount in controversy.

18 28. Plaintiffs do not perceive that this proposed class will be difficult to manage. And their  
19 attorneys have the experience, knowledge, and resources to adequately and properly represent the  
20 interests of the proposed class.

## 21 V.

### 22 GENERAL ALLEGATIONS

23 29. The Defendants sell various high zinc content brass plumbing Components utilized in  
24 conjunction with PEX potable water plumbing systems.

25 30. PEX is an acronym for cross-linked polyethylene. Polyethylene is a raw material and the  
26 "X" on the generic name "PEX" refers to the cross-linking of the polyethylene across its molecular  
27 chains.  
28

1           31. For decades, plumbers and homeowners used copper piping for portable water plumbing  
2 systems. Copper is and has been accepted by virtually all plumbing codes throughout the United States.

3           32. In the 1980s, plumbing system manufacturers in the United States began selling and  
4 plumbers began installing potable water plumbing systems with tubing made from polyethylene plastic.  
5 Plumbing systems using tubing made from polyethylene plastic were touted by manufacturers as being  
6 easier to install, cheaper and longer-lasting than copper plumbing systems.  
7

8           33. Polyethylene plumbing systems, however, quickly proved to be poorly conceived,  
9 designed and manufactured systems, and began to fail prematurely in the field, causing substantial  
10 property damage. A substantial amount of litigation ensued as a result of the widespread, premature  
11 failure of polyethylene plumbing systems. Several class actions were filed and settlements in those  
12 cases exceeded \$1.5 billion.  
13

14           34. At least partially in response to the failure of polyethylene plumbing systems, virtually  
15 all manufacturers ceased manufacturing polyethylene plumbing systems for sale in the United States. In  
16 addition, most plumbing codes eventually prohibited the installation of polyethylene plumbing systems.

17           35. Following the demise of polyethylene systems, the Defendants and other companies  
18 began selling alternative, non-copper plumbing products in the United States.

19           36. Specifically, the Defendants marketed and sold plumbing systems using PEX tubing for  
20 use in residential and commercial settings.  
21

22           37. The Defendants touted their PEX plumbing systems as being easier to install, cheaper  
23 and longer-lasting than copper plumbing systems.

24           38. The plumbing systems that were installed and used in the class members' homes are a  
25 PEX-type plastic pipe product connected using the Defendants' high zinc content yellow brass  
26 Components.

27           39. The Components and PEX pipes installed and used in the class members' homes are  
28 designed to distribute potable water.

1           40. Defendants sell or sold a PEX plumbing system utilizing high zinc content yellow brass  
2 Components that purportedly conform to various ASTM standards, including ASTM F877, F1960 and  
3 F2080.

4           41. The Defendants' Components are easily identified by product markings and stamps on  
5 the Components. Defendants sold these systems under a number of different trade names, including but  
6 not limited to "ProPex," "AquaPex," and "APR" plumbing systems.

7           42. The Defendants were negligent in selling the Components for a number of reasons,  
8 including their decision to actively market, promote, and sell components made from high zinc content  
9 brasses.

10           43. Brass is an alloy primarily composed of copper and zinc. High zinc-content brass  
11 Components installed and used as part of the plumbing systems in the homes are corroding due to a  
12 well-known chemical reaction called dezincification. "High zinc content" means a copper alloy having  
13 a zinc content percentage of the overall weight of the Components on average between 32%-42% and  
14 not otherwise treated to resist dezincification. Dezincification is a form of selective leaching or  
15 removal of an element (zinc) from the brass alloy by corrosion. As a result, the high-zinc-content brass  
16 Components also leach impermissible amounts of lead into the potable water, become porous, brittle,  
17 and/or blocked with zinc oxide and/or zinc carbonate, inevitably leading to restricted water flow and/or  
18 pressure, reduced material strength, corrosion, cracks, and/or leaks. Therefore, specification,  
19 installation and use of high-zinc-content brass Components in the class members' homes cause  
20 substantial injury/damage to the members by damaging and impairing the ability of the plumbing  
21 system to effectively operate as a potable-water-delivery system and results in the leaching of  
22 impermissible amounts of lead into the potable-water-delivery systems.

23           44. Defendants knew or should have known that the high-zinc content brass alloy used for  
24 the Components they sold and marketed made the Components such that they have and/or will  
25

1 prematurely fail and leach impermissible levels of lead into the potable water.

2       45. The design, materials choices, and manufacturing practices of the high zinc content  
3 yellow brass Components marketed and sold by Defendants have created a product that is defective and  
4 begins to fail and leach impermissible levels of lead into the potable water on its first day of use, even  
5 if perfectly installed in its intended environment.  
6

7       46. Because of their defective design and manufacture, the Components, including those  
8 installed at Plaintiffs' homes, have failed in their intended purpose.

9       47. Because of their defective design and manufacture, the Components are inherently  
10 unsafe, defective and are substantially certain to fail within the express warranty provided with the  
11 Components and/or within the expected useful life of the Components.

12       48. Because of the Components' defective design and manufacture, the homes, including the  
13 Plaintiffs' homes and buildings, have failed in their intended purpose as habitable dwellings.  
14

15       49. Because of the Components' defective design and manufacture, the homes, including the  
16 Plaintiffs' homes and buildings, are inherently unsafe, defective and are substantially certain to fail  
17 within the express warranty provided with the homes and/or within the expected useful life of the  
18 homes.

19       50. Plaintiffs and class members own, have installed, or have paid for damages caused by  
20 the defective Components that have already failed and are in the process of failing prematurely and thus  
21 have suffered or are reasonably certain to suffer actual injury well in advance of the warranted and  
22 expected life of the Components and the homes. These damages include, without limitation,  
23 dezincification corrosion, the leaching of zinc and lead into the potable water, plumbing blockages,  
24 reduced and/or restricted water flow and water pressure, loss of function, loss of structural integrity,  
25 cracks, weeps, leaks, systems failures, and damage to other property, appliances and components.  
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27       51. The degradation of the Components has caused damage to Plaintiffs' property other than  
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1 the Components sold by the Defendants. For example, the dezincification process damages other  
2 components of the plumbing system not sold by the Defendants like fixtures as well as appliances such  
3 as water heaters, ice makers, water treatment systems, dishwashers and clothes-washing machines by  
4 depositing damaging scale and buildup on those components and the leaching of impermissible  
5 amounts of lead into the potable-water-delivery systems.

6  
7 52. Plaintiffs are informed, believe, and thereupon allege that at all times relevant herein,  
8 Defendants were the officers, agents, employees, representatives, affiliates, members, predecessors,  
9 successors-in-interest and/or alter egos of one another in doing the things alleged herein and in so doing  
10 were acting in the scope of their respective authority and agency.

11 53. Plaintiffs are informed, believe, and thereupon allege that the high-zinc content brass  
12 Component deficiencies and defective conditions have proximately caused damage to the Plaintiffs and  
13 the class. The blatant manifestations of this dezincification injury include the dezincification corrosion  
14 itself, leaching lead into the potable-water-delivery system, plumbing blockages, reduced water flow  
15 and/or pressure, loss of function, loss of structural integrity, cracks, weeps, leaks, system failures,  
16 and/or damage to other property, appliances, and components. Plaintiffs are informed and believe that  
17 these damages are pervasive and exist in the homes.

18 54. The homes may have suffered damages in other ways and to other extents not presently  
19 known to Plaintiffs, and not specified above. Plaintiffs reserve the right to amend this Complaint upon  
20 discovery of any additional damages not referenced herein, and/or to present evidence of the same at  
21 the time of trial of this action.

22 55. Plaintiffs allege and assert that their claim of defective construction and this legal action  
23 have all been brought in a timely manner and within the statute of limitations and repose periods, if  
24 applicable.

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1 VI.

2 FIRST CAUSE OF ACTION

3 (Breach of Implied Warranties of Fitness for Particular Purpose, Merchantability,  
4 Habitability, Quality, and Workmanship)

5 56. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
6 Complaint as though fully set forth herein.

7 57. Plaintiffs are informed, believe, and thereupon allege that Defendants were engaged in  
8 and are responsible for the design, development, testing, manufacture, distribution, supply, marketing,  
9 sale and warranting of defective high zinc content yellow brass plumbing Components and potable-  
10 water-delivery systems installed and used in homes constructed throughout Central and Southern  
11 Arizona, including, but not limited to, Maricopa, Pinal and Pima Counties and that Plaintiffs and their  
12 members were the intended beneficiaries and/or the intended third-party beneficiaries of each and every  
13 such act and/or warranty.

14 58. By designing, manufacturing, marketing, supplying, and/or causing the high-zinc-  
15 content brass Components to be installed in the homes, Defendants expressly and/or impliedly  
16 warranted that said Components and systems were free of defective materials, were of merchantable  
17 quality, were suitable and fit for the ordinary purpose for which said systems and components were  
18 intended, were safe, were proper, and were habitable. Defendants also actively sought to distribute  
19 their products in this marketplace by making certain representations and warranties about their  
20 plumbing system to national, state, and/or local agencies such as building authorities where the product  
21 system was marketed and sold as approved for use in accordance with national, state, and/or local laws.  
22 As a result of these representations and warranties, national, state, and/or local agencies approved the  
23 high zinc content brass Components and plumbing systems for use, conveying the defective  
24 information and warranties to Plaintiffs and their members.

25 59. Defendants impliedly warranted that the high zinc content Components and plumbing  
26 systems were fit for the particular purpose they were intended, and that said systems and components  
27 would perform in a defect-free manner.

28 60. Plaintiffs are informed, believe, and thereupon allege that Defendants breached said

1 warranties by failing to adequately and properly develop, design, manufacture, test, assemble,  
 2 distribute, market, sell, and/or warrant the high zinc content Components and plumbing systems in the  
 3 homes and/or by failing to provide defect-free plumbing systems in the homes.

4 61. As a direct and proximate result of the breaches of the implied warranties by  
 5 Defendants, Plaintiffs and their members have been, and will continue to be damaged as more fully  
 6 described herein including, but not limited to product failures, dezincification corrosion, leaks,  
 7 blockages, loss of use and function of the plumbing systems and related improvements and/or  
 8 appliances provided by others, resultant damage to the homes and work of others (e.g., water loss,  
 9 damage to framing, drywall and/or other building materials), resultant damage to water quality,  
 10 including leaching of lead from the high zinc content Components into the potable-water-delivery  
 11 systems of the homes, economic losses including costs of maintenance and/or repair, and all reasonable  
 12 fees, costs, interest, and/or expenses associated therewith. These damages and others are expected to  
 13 increase over time as the defective systems and components continue to fail.

14 62. As a further direct and proximate result of the breaches of the implied warranties by  
 15 Defendants, Plaintiffs and their members have suffered damages in an amount not fully known but  
 16 believed to be within the jurisdiction of this Court in that they have been and will hereafter be required  
 17 to perform works of repair, restoration, and construction to all or portions of the homes to prevent  
 18 further damage and to restore the homes to their proper habitable condition. Plaintiffs and their  
 19 members will establish the amount of their damages at the time of trial according to proof.

20 63. Plaintiffs incorporate the prayer for relief as though set forth herein.

## 21 **VII.**

### 22 **SECOND CAUSE OF ACTION**

#### 23 **(Breach of Express Warranties)**

24 64. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
 25 Complaint as though fully set forth herein.

26 65. The Defendants did prepare, distribute, and provide express warranties as part of the  
 27 Defendants' potable-water-delivery systems, the high zinc content Components and the homes. These  
 28 warranties provide coverage for certain defects in these plumbing systems, high zinc content

1 Components and homes. These warranties were intended for use by customers and end-users of the  
2 plumbing systems and high zinc content Components and the purchasers of the homes, including  
3 Plaintiffs and their members.

4 66. The Defendants expressly warranted that the high-zinc-content brass Components were  
5 developed, designed, manufactured, and distributed in conformance with certain ASTM Standards,  
6 including ASTM F877, F1960 and F2080 and any and all applicable safety standards, building and  
7 product codes, standards, and regulations. In so doing, Defendants expressly warranted that their  
8 plumbing systems were fit, sound, and safe, and would remain so for a reasonable period of time.

9 67. Plaintiffs are informed, believe, and thereupon allege that the express warranties made  
10 and used by Defendants have at all relevant times been written in the form of, by example, and without  
11 limitation: product catalogues, instruction manuals, ASTM Standards and/or other codes or standards,  
12 specifically including NSF standards and/or codes, advertising flyers, brochures, sales literature,  
13 promotional packages, signs, magazine and newspaper articles and advertisements, all designed to  
14 promote the introduction and ultimate sale of the defective high zinc content Components in the State  
15 of Arizona, and to promote the belief that these systems and/or homes had been properly developed,  
16 designed, manufactured, and distributed for safe and effective use in this jurisdiction.

17 68. As a direct and proximate result of the breaches of the express warranties by Defendants  
18 as herein alleged, Plaintiffs and their members have been, and will continue to be, damaged as more  
19 fully described herein including, but not limited to blockages, restricted water flow and/or pressure,  
20 reduced material strength and structural integrity, weeping, leaks, cracks, product failures,  
21 dezincification corrosion, loss of use and function of the plumbing systems and related improvements  
22 and/or appliances provided by others, resultant damage to the homes and work of others (e.g., water  
23 loss, damage to framing, drywall and/or other building materials), resultant damage to water quality,  
24 including the leaching of lead into the homes' potable-water-delivery systems, and economic losses  
25 including costs of maintenance and/or repair, and all reasonable fees, costs, interest, and/or expenses  
26 associated therewith. These damages and others are expected to increase over time as the defective  
27 systems and components continue to fail.

28 69. As a further direct and proximate result of the breaches of the express warranties by



1 Defendants as herein alleged, Plaintiffs and their members have suffered injuries and/or damages to  
 2 property in an amount not fully known but believed to be within the jurisdiction of this Court in that  
 3 they have been and will hereafter be required to perform works of repair, restoration, and construction  
 4 to all or portions of the homes to prevent further damage and to restore the homes to their proper  
 5 condition. Plaintiffs and their members will establish the amount of their damages at the time of trial  
 6 according to proof.

7 70. Plaintiffs incorporate the prayer for relief as though set forth herein.

8 **X.**

9 **FIFTH CAUSE OF ACTION**

10 **(Negligence, including Negligent Misrepresentation, Failure to**  
 11 **Warn/Instruct, and Negligent Selection)**

12 71. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
 13 Complaint as though fully set forth herein.

14 72. Plaintiffs allege that Defendants knew or should have known that the high zinc content  
 15 Components were not properly or adequately designed, tested, engineered, manufactured, marketed,  
 16 distributed, marked, labeled, or represented (including instructions and warnings) such that Plaintiffs  
 17 and their members have been substantially damaged or injured thereby, and that Defendants knew or  
 18 should have known that the homes, which contain defective high-zinc-content brass Components and  
 19 attendant high-zinc-content brass plumbing components, are defective because they are not and were  
 20 not developed, designed, manufactured, assembled, constructed, plumbed, distributed, marketed, sold,  
 21 and/or warranted in accordance with applicable laws, codes, and/or standards of care.

22 73. Plaintiffs allege Defendants were under a duty to exercise ordinary care to avoid  
 23 reasonably foreseeable harm to Plaintiffs and their members and knew or should have foreseen with  
 24 reasonable certainty that Plaintiffs and/or their members would suffer injury and/or monetary damages  
 25 as set forth herein by using, specifying for use, and/or installing the high zinc content Components in  
 26 the homes.

27 74. Plaintiffs are informed, believe, and thereupon allege that Defendants breached said duty  
 28 by negligently designing, developing, manufacturing, distributing, marketing, and/or selling

1 unreasonably unsafe and defective plumbing systems and attendant parts, which were installed and  
2 used in the homes, and/or by selecting and/or installing said plumbing systems and components in the  
3 homes, or causing the same to be installed, in a manner inconsistent with manufacturer's specifications,  
4 local, state and national codes, and/or standards of performance within the industry, as well as failing to  
5 select and/or use materials that are capable of performing in a defect-free manner.

6 75. Defendants' negligence includes the failure to provide adequate information to local  
7 building code authorities. Plaintiffs, their members, and/or their predecessors-in-interest are members  
8 of the class of persons that the building codes and ordinances were designed to protect. Such violations  
9 are negligence per se on the part of Defendants.

10 76. Defendants' negligence includes misrepresentations about the defective plumbing  
11 systems and components given to Plaintiffs, their members, and/or their representatives, upon which  
12 they relied to their detriment and damage.

13 77. As a direct and proximate result of the Defendants' negligence, Plaintiffs and their  
14 members have been, and will continue to be, damaged as more fully described herein including, but not  
15 limited to, blockages, restricted water flow and/or pressure, reduced material strength and structural  
16 integrity, weeping, leaks, cracks, product failures, dezincification corrosion, loss of use and function of  
17 the plumbing system and related improvements and/or appliances provided by others, resultant damage  
18 to the homes and work of others (e.g., water loss, damage to framing, drywall and/or other building  
19 materials), resultant damage to water quality, including the leaching of lead into the homes' potable-  
20 water-delivery systems, and economic losses including costs of maintenance and/or repair, and all  
21 reasonable fees, costs, interest and/or expenses associated therewith. These damages and others are  
22 expected to increase over time as the defective systems and components continue to fail.

23 78. As a further direct and proximate result of Defendants' negligence, Plaintiffs and their  
24 members have suffered injuries and/or damages in an amount not fully known but believed to be within  
25 the jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
26 repair, restoration, and construction to all or portions of the homes to prevent further damage and to  
27 restore the homes to their proper habitable condition. Plaintiffs and their members have also been  
28 compelled to resort to litigation against Defendants to judicially resolve their differences.



1 market, warn, sell, or select the plumbing systems and component parts in the homes in that said system  
 2 and component parts are defective and/or otherwise unsuitable for use, resulting in failures and damage  
 3 to Plaintiffs and their members. For example, but not limitation, the plumbing systems and components  
 4 have failed (dezincified), caused damage to other property, and caused blockages, restricted water flow  
 5 and/or pressure, reduced material strength and structural integrity, weeping, leaks, cracks, product  
 6 failures, stress, corrosion, cracking, loss of use and function of the plumbing systems and related  
 7 improvements and/or appliances provided by others, leaching of lead into the homes' potable-water-  
 8 delivery systems, and other damages. Defendants had prior notice and knowledge of these defects and  
 9 potential damages, and failed to act timely and accordingly to remedy these defects.

10 89. As a direct and proximate result of the foregoing, Plaintiffs and their members have  
 11 suffered injuries and/or damages in an amount not fully known but believed to be within the  
 12 jurisdiction of this Court in that they have been and will hereafter be required to perform works of  
 13 repair, restoration, and construction to all or portions of the homes to prevent further damage and to  
 14 restore the homes to their proper habitable condition. Plaintiffs and their members will establish the  
 15 amount of their damages at the time of trial according to proof. As a further direct and proximate result  
 16 of the foregoing, Plaintiffs and their members have been compelled to resort to litigation against  
 17 Defendants to judicially resolve their differences.

18 90. Plaintiffs' and their members' damages and/or injuries, are sufficient circumstantial  
 19 evidence of proof of the existence of a defect or an unreasonably dangerous condition, and evidence of  
 20 a defect or an unreasonably dangerous condition, is properly inferred under the doctrine of res ipsa  
 21 loquitur.

22 91. Plaintiffs incorporate the prayer for relief as though set forth herein.

## 23 XII.

### 24 SEVENTH CAUSE OF ACTION

#### 25 (Declaratory and Equitable Relief)

26 92. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
 27 Complaint as though fully set forth herein.

28 93. Plaintiff and class members seek a Court declaration of the following:

1 a. The high zinc content yellow brass Components have a defect that causes them  
2 to prematurely fail, resulting in water damage to property, leaching of impermissible amounts of lead  
3 into the potable-water-delivery systems and the necessity of the removal and replacement of the  
4 Components;

5 b. The high zinc content yellow brass Components have a defect in workmanship  
6 and material that causes failures;

7 c. Defendants knew of the defects in the high zinc content yellow brass  
8 Components;

9 d. Defendants shall re-audit and reassess all prior warranty claims regarding the  
10 high zinc content yellow brass Components, including claims previously denied in whole or in part; and

11 e. Defendants shall establish an inspection program and protocol to be  
12 communicated to all class members that will require Defendants to pay for damage caused by the high  
13 zinc content yellow brass Components and to replace those systems.  
14

15 **XIII.**

16 **EIGHTH CAUSE OF ACTION**

17 **(Violation of Arizona Consumer Fraud Act)**

18 94. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
19 Complaint as though fully set forth herein.

20 95. Defendants, have engaged in deceptive trade practices that are prohibited by Section 44-  
21 1522(a) of the Arizona Revised Statutes:

22 a. Defendants knowingly made false representations as to the characteristics,  
23 materials, standards, ingredients, uses, and benefits of the high zinc content yellow brass Components  
24 and plumbing systems, but not limited to representing that these materials and systems were defect-free  
25 and suitable for residential use in Central and Southern Arizona, including, but not limited to,  
26 Maricopa, Pinal and Pima Counties;

27 b. Defendants represented that the high zinc content yellow brass Components and  
28

1 plumbing systems were of a particular standard, quality, grade, style, or model and knew or should  
 2 have known that they are of another standard, quality, grade, style, or model including, but not limited  
 3 to life expectancy for these materials and systems;

4 c. Defendants knowingly made other false representations in transacting the  
 5 purchase and sale of the high zinc content yellow brass Components and plumbing systems; and

6 d. Defendants knowingly failed to disclose material facts in connection with the  
 7 purchase and sale of the high zinc content yellow brass Components and plumbing systems, but not  
 8 limited to the fact that these materials and systems would suffer from dezincification corrosion when  
 9 exposed to water in Central and Southern Arizona, including, but not limited to, Maricopa, Pinal and  
 10 Pima Counties.

11 96. But for the Defendants' unfair trade practices, Plaintiffs would not have been damaged  
 12 because their homes would not have been plumbed with these defective systems and materials.

13 97. Plaintiffs incorporate the prayer for relief as though set forth herein.

14 98. Pursuant to A.R.S. §§ 44-1521 – 44.1534, Plaintiffs and their members, as victims of  
 15 Defendants' consumer fraud, are entitled to recover the damage they have sustained as a result of that  
 16 fraud and any costs and reasonable attorneys' fees they incur as a result.

#### 17 **XIV.**

#### 18 **NINTH CAUSE OF ACTION**

#### 19 **(Alter Ego)**

20 99. Plaintiffs reallege and incorporate by reference all preceding paragraphs of this  
 21 Complaint as though fully set forth herein.

22 100. Plaintiffs are informed, believe, and thereupon allege that UPONOR CORPORATION  
 23 (Finnish Uponor Defendant) is the parent or grandparent corporation of UPONOR, INC.; WIRSBO  
 24 COMPANY; and UPONOR WIRSBO COMPANY (North American Defendants). The North  
 25 American Defendants form, with UPONOR CORPORATION at the apex, a worldwide group of  
 26 interrelated companies that are commonly engaged in the line of business that is designing, developing,  
 27 testing, manufacturing, distributing, supplying, marketing, selling, and warranting plumbing and  
 28 climate-control products for the construction and public utility industries.



1           6.     Enjoining Defendants from selling high zinc content yellow brass Components;

2           7.     Declaring the rights and obligations of the parties as prayed for;

3           8.     For general and special damages pursuant to all statutory or common law causes of  
4 action, all in an amount in excess of \$75,000;

5           9.     For consequential damages, including, but not limited to attorneys' fees and costs  
6 including all fees and expenses incurred before the filing of this Complaint;

7           10.    For the cost to repair and/or replace the defective plumbing systems and products;

8           11.    For costs and expenditures to correct, cure, or mitigate injustices and damages  
9 caused or that will be caused by the defects and/or deficiencies as set forth herein;

10          12.    Economic losses associated with the defects and/or deficiencies, including loss of  
11 use, relocation, and alternative housing;

12          13.    For an award of reasonable attorneys' fees, costs, expert costs, and expenses  
13 incurred in investigating the constructional defects in the homes and prosecuting all of these claims,  
14 including all fees and expenses incurred before the filing of this Complaint;

15          14.    For an award of pre-judgment interest on all monetary damages, fees, and costs  
16 awarded in this action;

17          15.    For a declaration that the instant action is properly commenced and resolves any and  
18 all disputes between Plaintiffs and their members and Defendants that arise out of the  
19 constructional defects, conduct, transactions, and occurrences set forth herein;

20          16.    For a declaratory judgment adjudicating the relative rights and duties of the parties;  
21 and

22          17.    For such further declaratory, equitable, or other relief as the Court may deem  
23 necessary and appropriate under the circumstance.

24           ///  
25  
26  
27  
28



**XVII.**

**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury on all issues so triable.

Dated this 5<sup>th</sup> day of April, 2012.

**GOLDENBERG HELLER ANTOGNOLI &  
ROWLAND, P.C.**

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